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January 14, 2003

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**Federal Communications Commission  
Office of the Secretary**

## VIA HAND DELIVERY

Marlene H. Dortcli, Secretary  
Federal Communications Commission  
Room CY-B-402  
445 12th Street, S.W.  
Washington, D.C. 20554

2

Re: Application by SBC Communications Inc., et al., for Provision of In-Region,  
InterLATA Services in Nevada

Dear Ms. Dortcli:

Accompanying this letter is the Application of SBC Communications Inc. ("SBC") for Provision of In-Region, InterLATA Services in Nevada.

Pursuant to the Commission's filing requirements, the following are being provided with this letter:

- Two CD-ROM sets containing the entire Application, in electronic form, redacted for public inspection. The Application includes a brief in support of the Application, one appendix of affidavits and supporting exhibits, and ten appendices containing additional supporting documentation.
- One original and one copy of the Application in paper form, redacted for public inspection.
- One original *of* only those portions of the Application that contain confidential information. This includes portions of the brief and Appendix A (Affidavits), as well as certain information contained within the Nevada state record. A copy of this letter accompanies the confidential portions of the Application. The material designated as confidential includes information relating to specific carriers' operations in Nevada as

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January 14, 2003

Page 2

well as cost and other information that is proprietary to Nevada Bell. This information is not disclosed to the public, and disclosure would cause substantial harm. SBC accordingly requests that the Commission treat these portions of the Application as confidential.

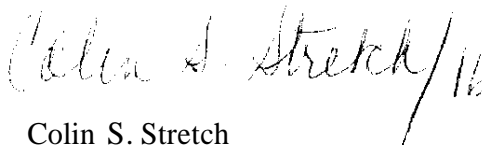
SBC is also providing a copy of the Application, in paper and electronic form, redacted for public inspection, to Qualex, the Commission's copy contractor. In addition, we are providing the Wireline Competition Bureau with 22 copies of the brief and 22 copies of Appendix A in paper form, as well as 22 CD-ROM versions of the entire Application in electronic form. **All** of this material is redacted for public inspection. We are also submitting to the Bureau **two** copies in paper form of those portions of the Application that contain confidential information.

All inquiries relating to access (subject to the terms of any applicable protective order) to confidential information submitted by SBC in support of the Application should be addressed to:

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Finally, I am enclosing an extra copy of this letter for date-stamp and return. If you have any questions regarding the materials provided with this letter, please contact me at (202) 326-7968. Thank you for your assistance in this matter.

Yours truly,

A handwritten signature in dark ink, reading "Colin S. Stretch" followed by a stylized flourish or date "1/16".

Colin S. Stretch

Encs

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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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Federal Communications Commission  
Office of the Secretary

In the Matter of

Application by SBC Communications Inc.,  
Nevada Bell Telephone Company, and  
Southwestern Bell Communications Services,  
Inc. for Provision of In-Region, InterLATA  
Services in Nevada

WC Docket No. 03-10

To: The Commission

**BRIEF IN SUPPORT OF APPLICATION BY SBC FOR  
PROVISION OF IN-REGION, INTERLATA SERVICES IN NEVADA**

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## EXECUTIVE SUMMARY

This Application – which the Public Utilities Commission of Nevada has voted unanimously to support – differs from most section 271 applications the Commission has reviewed to date. Nevada Bell was the smallest of the original 20 Bell operating companies created by the divestiture of the Bell System, and it remains a fraction of the size of most carriers subject to section 271's prohibition on interLATA services. Nevada Bell serves just over 370,000 access lines – or about one-quarter of the lines in Nevada.

Although this Application is accordingly one of the smallest the Commission has reviewed to date, it comes on the heels of one of the largest. Less than a month ago, this Commission concluded that Nevada Bell's affiliate Pacific Bell Telephone Company had satisfied each aspect of the competitive checklist and was entitled to section 271 relief in California. This Application builds on Pacific's successful efforts to open the local market to competition and presents, if anything, an even stronger case for approval. Many aspects of this Application are mirror images of the showing the Commission approved in the California Order. Because the Commission found Pacific's showing to satisfy the requirements of section 271, it follows that these aspects of Nevada Bell's showing are likewise checklist-compliant.

Thus, for example, as the Nevada Commission found based on an independent third-party attestation, Nevada Bell's OSS are the same as Pacific's. Nevada Bell relies on the same systems, the same processes, and, in some cases, even the same personnel as Pacific. If the OSS work for Pacific's wholesale customers, they work for Nevada Bell's as well. Likewise, Nevada Bell's processes and procedures for performing hot cuts, porting numbers, and provisioning UNEs are in most cases identical to the processes reviewed and approved in the California Order, as is its showing of compliance with section 272. The Commission's endorsement of Pacific's

application with respect to these requirements in the California Order accordingly applies equally to Nevada Bell.

Nevada Bell's serving area is in many respects an unlikely market for CLEC entry – it includes a relatively limited number of access lines spread across a land area larger than 19 states. Nevertheless, due to Nevada Bell's extensive efforts to open the local market – and its ability to build upon the work done in California – competition has taken root in the state. CLECs serve between 22 and 25 percent of the business market in Nevada Bell's serving area, as well as a proportion of residential customers that is comparable to the proportion served by CLECs in Vermont and Maine when the Commission reviewed section 271 applications for those states. The bulk of the business competition is provided over CLECs' own switches, and some of the residential competition is likewise provided by carriers that rely at least in part on their own facilities and/or UNEs leased from Nevada Bell. Nevada Bell accordingly satisfies Track A under the Commission's well-established standards. In addition, at least one competitive carrier in Nevada Bell's serving area is providing broadband PCS service to consumers as a replacement for landline service. This carrier bolsters Nevada Bell's showing that its residential consumers have an "actual commercial alternative" to Nevada Bell's service.

Nevada Bell makes available each of the UNEs required by the Commission's rules at TELRIC-compliant rates. Indeed, in the state section 271 proceeding, no party disputed that Nevada Bell's UNE rates were set according to TELRIC. Nevada Bell's recurring rates are the product of a version of the Hatfield model which AT&T and WorldCom jointly sponsored before *the* PUCN, and which AT&T described as "consistent with the requirements of the 1996 Act, as well as with the TELRIC methodology adopted by the FCC." Many of the inputs used in that model were likewise endorsed by AT&T and in all events are consistent with the Commission's

previous guidance on the proper application of TELRIC principles. As for Nevada Bell's non-recurring rates, the vast majority were adopted from the California Public Utility Commission's extensively litigated OANAD proceeding by stipulation of the parties, which jointly agreed that the adopted rates are "cost based and fairly represent the forward looking economic costs incurred by Nevada Bell."

The openness of Nevada Bell's serving area to competition is verifiable on an ongoing basis through an extensive performance-monitoring program. Nevada Bell provides monthly reports on more than 1,000 aspects of its wholesale service, under a plan developed with CLECs and the PUCN. Nevada Bell's performance under this plan has been excellent. In the three months included with this Application (September – November 2002), Nevada Bell met 92, 96, and 97 percent, respectively, of the submeasures for which data were available. For the three months as a whole, Nevada Bell met the relevant standard in at least two out of the three months for an astounding 98.1 percent of the submeasures with available data. Such sustained performance – under PUCN-approved standards negotiated with CLECs – leaves no room for doubt that Nevada Bell is providing its wholesale customers a meaningful opportunity to compete

To ensure that Nevada Bell continues to provide nondiscriminatory service following section 271 relief, the PUCN has put in place an incentive plan exposing Nevada Bell to approximately \$2.8 million in liability per year – the same liability, measured in terms of net revenue, at issue in numerous incentive plans the Commission has reviewed and approved previously. That liability, coupled with the Commission's powers to limit or even rescind interLATA authority or otherwise to impose penalties for violations of legal duties, makes "backsliding" in the wake of section 271 relief inconceivable.

Virtually everyone – the PUCN, legislators, carriers, and economists alike – agrees that SBC’s entry into in-region, interLATA services will spur long-distance competition in Nevada, particularly to serve lower-volume, residential callers. In states where SBC is competing for long-distance customers, AT&T and the other incumbent interexchange carriers have offered promotions, free gifts, and bundled service offerings. SBC’s interLATA entry is also likely to spur additional competition in the local market, as the long-distance incumbents, faced with losing customers to a bundled package of local and long distance, attempt to provide a competitive alternative. As Chairman Powell recently noted, “[w]e see a correlation between the process for approving applications and growing robustness in the markets.”

Approval of this Application is mandated not only by Nevada Bell’s satisfaction of the 271 checklist and the public interest, but also by equity. **As** noted at the outset, Nevada Bell serves approximately one-quarter of the local access lines in the state. Almost all of the rest are served by Sprint, Nevada’s largest incumbent LEC. Sprint is also one of the nation’s largest long-distance carriers, yet it is Nevada Bell that may not provide interLATA service due to theoretical concerns about leveraging local exchange assets into long distance. Whatever the merits of that theory on a national basis at the time of the breakup of the Bell System or the enactment of the 1996 Act, it is undoubtedly without justification today in Nevada. **As** this Application shows in painstaking detail, Nevada Bell, in collaboration with the PUCN and numerous local carriers and building on the efforts of Pacific and the California PUC, has established the framework for full local telephone competition in Nevada Bell’s serving area. With that framework in place, and with the PUCN’s unequivocal endorsement of Nevada Bell’s bid for long-distance relief, there is no logical reason to deny Nevada Bell’s consumers the opportunities available to other consumers throughout the state.

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ATTACHMENTS:

Attach. 1: Required Statements

Attach. 2: Certifications

Attach. 3: Detailed Index of Appendices (Separately Bound)

APPENDIX A (Affidavits):

Tab 1:	Joe Carrisalez (SBCS Section 272 Compliance)
Tab 2:	Carol Chapman (Wholesale Provisioning of Advanced Services)
Tab 3:	Domenic J. Cusolito (Local Operations Center)
Tab 4:	Domenic J. Cusolito, Ginger L. Henry, Gwen S. Johnson, and Richard J. Motta (Hot Cuts)
Tab 5:	William C. Deere (Network Issues)
Tab 6:	Michael E. Flynn (Billing)
Tab 7:	John S. Habeeb (Structural Separation of Advanced Services)
Tab 8:	Robert Henrichs (Accounting Safeguards)
Tab 9:	Ginger L. Henry and Kris A. Wells (Local Service Center)

- Tab 10: Stephen D. Huston and Beth Lawson  
(OSS)
- Tab 11: Daniel O. Jacobsen  
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- Tab 13: Richard J. Motta and Richard Resnick  
(Network Operations)
- Tab 14: Christopher P. Nations  
(Operator Services, Directory Assistance and White Pages Listings)
- Tab 15: Scott E. Rabideau  
(Non-Discriminatory Access to Poles, Ducts, Conduits, and Rights-of-way)
- Tab 16: Thomas G. Ries  
(Cost)
- Tab 17: Colleen L. Shannon  
(Wholesale Policy Issues)
- Tab 18: Eric D. Smith  
(Number Portability and Number Administration)
- Tab 19: J. Gary Smith  
(Local Exchange Competition)
- Tab 20: Linda Yohe  
(Non-Accounting Safeguards)

## GLOSSARY OF 271 ORDERS

<u>Arkansas/Missouri Order</u>	Memorandum Opinion and Order, <u>Joint Application by SRC Communications Inc., et al., Pursuant to Section 271 of the Telecommunications Act of 1996 To Provide In-Region, InterLATA Services in Arkansas and Missouri</u> , 16 FCC Rcd 20719 (2001), <u>affd, AT&amp;T Corp. v. FCC</u> , No. 01-1511, 2002 WL 31558095, 50 Fed. App. 453 (D.C. Cir. Nov. 18, 2002)
<u>BellSouth Five-State Order</u>	Memorandum Opinion and Order, <u>Joint Application by BellSouth Corporation, et al., for Provision of In-Region, InterLATA Services in Alabama, Kentucky, Mississippi, North Carolina, and South Carolina</u> , 17 FCC Rcd 17595 (2002)
<u>California Order</u>	Memorandum Opinion and Order, <u>Application by SBC Communications Inc., et al., for Authorization To Provide In-Region, InterLATA Services in California</u> , WC Docket No. 02-306, FCC 02-330 (rel. Dec. 19, 2002)
<u>Connecticut Order</u>	Memorandum Opinion and Order, <u>Application by Verizon New York Inc., et al., for Authorization to Provide In-Region, InterLATA Services in Connecticut</u> , 16 FCC Rcd 14147 (2001)
<u>Georgia/Louisiana Order</u>	Memorandum Opinion and Order, <u>Joint Application by BellSouth Corporation, et al., for Provision of In-Region, InterLATA Services in Georgia and Louisiana</u> , 17 FCC Rcd 9018 (2002)
<u>Kansas/Oklahoma Order</u>	Memorandum Opinion and Order, <u>Joint Application by SBC Communications Inc., et al., for Provision of In-Region, InterLATA Services in Kansas and Oklahoma</u> , 16 FCC Rcd 6237 (2001), <u>remanded in part, Sprint Communications Co. v. FCC</u> , 274 F.3d 549 (D.C. Cir. 2001)
<u>Massachusetts Order</u>	Memorandum Opinion and Order, <u>Application by Verizon New England Inc., et al., For Authorization to Provide In-Region, InterLATA Services in Massachusetts</u> , 16 FCC Rcd 8988 (2001), <u>affd in part, dismissed in part, and remanded in part, WorldCom,</u>

Inc. v. FCC, 308 F.3d 1 (D.C. Cir. 2002)

Michigan Order

Memorandum Opinion and Order, Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services In Michigan, 12 FCC Rcd 20543 (1997)

New Jersey Order

Memorandum Opinion and Order, Application by Verizon New Jersey Inc., et al., for Authorization To Provide In-Region, InterLATA Services in New Jersey, 17 FCC Rcd 12275 (2002)

New York Order

Memorandum Opinion and Order, Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the State of New York, 15 FCC Rcd 3953 (1999), aff'd, AT&T Corp. v. FCC, 220 F.3d 607 (D.C. Cir. 2000)

Qwest Nine-State Order

Memorandum Opinion and Order, Application by Qwest Communications International, Inc. for Authorization To Provide In-Region, InterLATA Services in the States of Colorado, Idaho, Iowa, Montana, Nebraska, North Dakota, Utah, Washington and Wyoming, WC Docket No. 02-314, FCC 02-332 (rel. Dec. 23, 2002)

Second Louisiana Order

Memorandum Opinion and Order, Application of BellSouth Corporation, et al., for Provision of In-Region, InterLATA Services in Louisiana, 13 FCC Rcd 20599 (1998)

Texas Order

Memorandum Opinion and Order, Application by SBC Communications Inc., et al. Pursuant to Section 271 of the Telecommunications Act of 1996 To Provide In-Region, InterLATA Services In Texas, 15 FCC Rcd 18354 (2000)

Vermont Order

Memorandum Opinion and Order, Application by Verizon New England Inc., et al., for Authorization To Provide In-Region, InterLATA Services in Vermont, 17 FCC Rcd 7625 (2002), appeal dismissed, AT&T Corp. v. FCC, No. 02-1152, 2002 WL 31619058 (D.C. Cir. Nov. 19, 2002)

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of

Application by SBC Communications Inc.,  
Nevada Bell Telephone Company, and  
Southwestern Bell Communications Services,  
Inc. for Provision of In-Region, InterLATA  
Services in Nevada

WC Docket No. 03-

To: The Commission

**BRIEF IN SUPPORT OF APPLICATION BY SBC FOR  
PROVISION OF IN-REGION, INTERLATA SERVICES IN NEVADA**

**INTRODUCTION**

Pursuant to section 271(d)(1) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, Pub. L. No. 104-104, § 151(a), 110 Stat. 89 (“1996 Act” or “Act”), SBC Communications Inc. and its subsidiaries Nevada Bell Telephone Company (“Nevada Bell”) and Southwestern Bell Communications Services, Inc. (“SBCS”) – collectively, “SBC” – seek authority to provide in-region, interLATA services (including services treated as such under 47 U.S.C. § 271(j)) in the State of Nevada.’

This Application builds on the Commission’s approval, less than a month ago, of SBC’s section 271 application for Pacific Bell Telephone Company (“Pacific”) in California. As we

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<sup>i</sup> This Brief and its supporting affidavits are available in electronic form at [http://www.sbc.com/public\\_affairs/competition\\_and\\_long\\_distance/long\\_distance\\_by\\_state/0,5931,145,00.html](http://www.sbc.com/public_affairs/competition_and_long_distance/long_distance_by_state/0,5931,145,00.html). SBCS has received authorization under 47 U.S.C. § 214 to provide international services originating in Nevada, conditioned on a grant of authority to provide interLATA services pursuant to section 271. See Public Notice, International Bureau Policy Division Grants SBC Communications International Section 214 Authority for California and Conditional Authority for Nevada, File No. ITC-214-20020923-00452, DA 02-3544 (rel. Dec. 20, 2002).

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explain in detail below, Nevada Bell's processes and procedures for fulfilling its duties under the 1996 Act are in many critical respects the same as Pacific's. Among other things, Nevada Bell's OSS are the same as Pacific's, and Nevada Bell tracks the performance of those OSS pursuant to performance measures that are substantially the same as the comprehensive and reliable measures the Commission reviewed and approved in the California Order. Nevada Bell has thus followed in Pacific's tracks in opening the local market to competition, and it has been equally successful in doing so

Just as Nevada Bell has been able to take advantage of the "significant progress [Pacific] has made" in opening the local market in California, California Order 73, so too has the Public Utilities Commission of Nevada ("PUCN") been able to capitalize on the "significant time and effort expended [by the California Public Utility Commission ("California PUC" or "CPUC")] in overseeing Pacific Bell's implementation" of the requirements of the 1996 Act, id. ¶¶ 2-3. In the Kansas/Oklahoma Order, this Commission expressly recommended that state commissions with limited resources "build[] on the work of other states in their region." Kansas/Oklahoma ¶ 2. The PUCN has done so. Thus, for example, the bulk of Nevada Bell's non-recurring UNE rates were adopted by stipulation of the parties from the California commission's OANAD proceeding. See Jacobsen Aff. ¶ 29 (App. A, Tab 11); see also California Order ¶ 66 (concluding that California PUC properly applied TELRIC in setting Pacific's non-recurring UNE rates). Likewise, as discussed in more detail below, the Nevada commission's review of Nevada Bell's OSS relied heavily on the comprehensive OSS test overseen by the California PUC as well as the results of that commission's section 271 review.

Although the PUCN has thus properly relied in some respects upon the work of the CPUC in California, it has by the same token devoted a large portion of its own resources to the



implementation of the 1996 Act. In February 1996, the PUCN opened a proceeding to review and determine its responsibilities under the newly enacted 1996 Act. That proceeding resulted in procedures for arbitrating and approving interconnection agreements under section 252, pursuant to which the PUCN has approved more than 90 agreements between Nevada Bell and CLECs. See Jacobsen Aff. ¶¶ 18, 20. In addition to these efforts to review and approve individual interconnection agreements, the PUCN has also conducted a series of comprehensive investigations into terms and conditions that apply generically to all such agreements. Its pricing proceedings – noted above and detailed below – covered not just UNEs, but also the establishment of an avoided-cost discount to apply to retail services and the approval of collocation rates. See id. ¶¶ 23, 37. The PUCN has also undertaken proceedings to establish collocation terms and conditions, see id. ¶¶ 38-39, it has supervised the implementation of both dialing parity and local number portability, see id. ¶ 17, and it has overseen the development of comprehensive performance measurements (and an incentive plan) to ensure that CLECs and regulators can carefully track Nevada Bell's fulfillment of its duties under the 1996 Act, see id. ¶¶ 40-49.

The PUCN has been equally diligent in its implementation of section 271. In **July** 2000, Nevada Bell filed a draft federal section 271 application with the PUCN, thereby triggering a comprehensive PUCN proceeding to determine whether Nevada Bell in fact complied with the competitive checklist. Particularly in light of the limited resources of the Nevada commission, this proceeding was extraordinary in its detail and exhaustive in its scope. It encompassed a series of presentations by Nevada Bell affiants to PUCN staff and interested parties, 17 days of evidentiary hearings, and extensive written testimony and briefs. See id. ¶¶ 11, 51

In the course of this proceeding, the PUCN recognized that the most efficient and reliable course for gauging Nevada Bell's compliance with section 271 was to adopt a regional strategy that would rely on California OSS testing and the California PUC's section 271 review. See id. ¶ 52. The PUCN thus proceeded in two stages. The first stage – which included both hearings and a collaborative workshop in November and December 2000 – encompassed those section 271 compliance items that did not rely on the results of the then-pending OSS test in California. See id. ¶ 53. The second phase hinged on the CPUC's release of the results of Pacific's OSS test.

Following the release of those results in December 2000, Nevada Bell engaged PricewaterhouseCoopers ("PwC") to attest that Nevada Bell's and Pacific's OSS met the "sameness" standards set out in the Kansas/Oklahoma Order. PwC completed its review and provided its attestation to the PUCN in May 2001, and the parties then provided comprehensive testimony addressing the adequacy of Nevada Bell's OSS showing. See id. ¶ 56; see also PricewaterhouseCoopers, Nevada Bell Tel. Co. Operational Support Systems Comparability Attestation (May 10, 2001) (App. C, Tab 51) ("PwC Sameness Attestation"); Jacobsen Aff. ¶¶ 62-68 (providing overview of PwC's sameness investigation and attestation).

At that point – in October 2001 – the parties jointly agreed that the record was complete and that, in light of the PUCN's regional approach, all that remained was to await the California PUC's final decision on Pacific's section 271 application. The parties accordingly jointly requested the PUCN to close the evidentiary record and to permit the parties to brief the entire proceeding once the California PUC issued that final decision. See Jacobsen Aff. ¶ 58. The CPUC issued its final decision on September 19, 2002, and the parties submitted opening and reply briefs to the PUCN soon after. See id. ¶ 59.

On December 17, 2002, the PUCN voted unanimously to endorse Nevada Bell's section 271 application. See id. ¶ 60. The rationale for this decision is set forth in a comprehensive, 216-page order endorsing Nevada Bell's bid for interLATA relief. That order, which the PUCN released on January 6, 2003, and which is included in Appendix C, Tab 75 of this Application, addresses in detail each aspect of Nevada Bell's section 271 showing and unequivocally concludes not only that Nevada Bell satisfies the requirements of the competitive checklist and section 272, but also that Nevada Bell's interLATA entry is in the public interest. As the Nevada commission makes clear, "Nevada Bell has established a record that amply supports the conclusion that the Company has satisfied each of the fourteen items on the competitive checklist," and its "entry into the long-distance market w[ill] benefit consumers and foster a more competitive marketplace in interLATA services." PUCN Order at 206-07

\* \* \* \*

This Application confirms what the PUCN expressly found – that SBC has satisfied all prerequisites for interLATA relief. Part I of this Brief details CLECs' provision of local services in Nevada and confirms that Nevada Bell satisfies the first statutory requirement for section 271 relief under Track A – the presence of an "actual commercial alternative" for both business and residential subscribers in Nevada Bell's serving area. See 47 U.S.C. § 271(c)(1)(A), (d)(3)(A).

After this empirical proof that the local market in Nevada Bell's serving area is open, Part II offers qualitative proof, by demonstrating in detail Nevada Bell's compliance with the specific requirements of the competitive checklist, as established by the 1996 Act and amplified by the FCC's implementing decisions. Part II describes the specific terms and conditions of Nevada Bell's contracts with its CLEC customers, as well as technical features of Nevada Bell's network, and it demonstrates that Nevada Bell provides CLECs with a meaningful opportunity to

compete in the local market. This discussion and the supporting affidavits draw heavily upon the Commission's recent conclusion that Pacific – which in all material respects operates the same systems as Nevada Bell, and which in many respects offers the same contractual terms – satisfies the competitive checklist and provides CLECs everything they reasonably might need to compete in the local market.'

Part III of this Brief demonstrates that approving SBC's Application would serve the public interest, convenience, and necessity, in satisfaction of section 271(d)(3)(C). Indeed, approval of this Application is not merely consistent with the public interest; freeing SBC from statutory entry barriers is necessary to spark local entry and bring consumers in Nevada Bell's serving area the same benefits of both local and long-distance competition that consumers are now experiencing not only next-door in California, but also elsewhere in Nevada itself.

Part IV confirms that SBC will abide by the structural and non-structural safeguards of section 272, as well as the Commission's implementing regulations, when it provides interLATA services in Nevada. See id. § 271(d)(3)(B).

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<sup>2</sup> Some of the affidavits SBC submits with this Application are the same affidavits submitted in support of the California 271 application. Specifically, in this Application, SBC relies on the California affidavits of Domenic Cusolito (Local Operations Center); Ginger Henry (Local Service Center); Michael Flynn (Billing); Richard Motta (Network Operations); Domenic Cusolito, Ginger Henry, Gwen Johnson, and Richard Motta (Hot Cuts); Jan Rogers (OS/DA and White Pages); Eric Smith (LNP); Linda Yohe (Section 272); Joe Carrisalez (Section 272), and Robert Henrichs (Section 272). In each of these instances, SBC has included the California affidavit as "Attachment A" to a separate affidavit affirming that the material included in that California affidavit applies equally to Nevada Bell, with any exceptions specifically noted. In this proceeding, the Henry LSC California affidavit is jointly sponsored by Ginger Henry and Kris Wells; Jan Rogers' OS/DA California affidavit is sponsored by Christopher Nations; and the Motta Network Operations California affidavit is jointly sponsored by Richard Motta and Richard Resnick. The remainder of the California affidavits are sponsored by the same affiant(s) who provided the affidavit in the California proceeding.

## DISCUSSION

### I. **SBC IS ELIGIBLE TO SEEK INTERLATA RELIEF UNDER SECTION 271(c)(1)(A)**

Nevada Bell's serving area is characterized by strikingly low population density and few urban centers. See J.G. Smith Aff. ¶ 4 (App. A, Tab 19). Nevada Bell's comparatively few access lines – approximately 371,300, provided to about 210,000 customers – are spread out over a service area “larger than the land area of 19 states.” PUCN Order at 26. Even including Las Vegas – the state's most populous city, which is not in Nevada Bell's serving area – Nevada is one of the most sparsely populated states in the nation. See J.G. Smith Aff. ¶ 4.

Despite these attributes – which serve to limit the attractiveness of Nevada Bell's serving area to CLECs – local competition has taken root in the state. Approximately 15 wireline CLECs provide service in Nevada Bell's serving area, and these CLECs serve between 9.5 and 11.2 percent of the market. See id. ¶ 8 & Table 1. The vast majority of this competition – between 71 and 76 percent – is provided over CLECs' own facilities. See id. ¶ 9 & Table 2. As the PUCN has noted, as a result of Nevada Bell's efforts to open the local market, “[c]ompetitive providers have entered and serve the local market for both residential and business customers, offering a complete array of telecommunication services.” PUCN Order at 25-26

Wireline penetration in Nevada is particularly notable in the business segment. As the affidavit of J. Gary Smith notes, CLECs in Nevada have captured more than one in five business lines in Nevada Bell's serving area, and, again, the bulk of these lines are served over CLECs' own facilities. See J.G. Smith Aff. ¶ 10 & Table 3 (CLECs serve between 37,700 and 45,700 business lines in Nevada Bell's serving area); see also id. ¶ 13 (total number of CLEC resold lines, including residential lines, is approximately 11,300). Among the CLECs serving the business market in Nevada are WorldCom and ATG. See id. Attach. D at 1. Each of these

carriers provides extensive facilities-based service to business customers in Nevada Bell's service area, and each accordingly satisfies the "Track A" requirement that "one or more unaffiliated competing providers of telephone exchange service" serve "business subscribers." 47 U.S.C. § 271(c)(1)(A).

CLECs' wireline presence in the residential market in Nevada Bell's serving area is likewise sufficient to satisfy Track A under the Commission's established precedent. In fact, measured on a percentage basis, wireline CLECs in Nevada serve a comparable number of residential customers in Nevada Bell's serving area as they did in Vermont and Maine at the time the Commission reviewed 271 applications for those states.<sup>3</sup> The residential competition in Nevada Bell's serving area satisfies the statutory requirements of Track A on at least three independent grounds:

First, at least one CLEC – \*\*\* – is providing wireline service to residential customers over UNE-P. See J.G. Smith Aff. ¶ 12 & Attach. D. The number of residential subscribers that this carrier serves over UNE-P in Nevada is more than "de minimis," as that standard has been developed and applied in previous section 271 orders. See, e.g., Vermont Order ¶ 11 (concluding that "SoVerNet, Z-Tel, and Adelphia . . . each . . . serves more than a de minimis number of end users"). It follows that \*\*\* "represents an 'actual

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<sup>3</sup> In Vermont, CLECs served approximately 0.28 percent of the residential market at the time of Verizon's application. See Brown Decl. Attach. 1, Table 1, CC Docket No. 02-7 (FCC filed Jan. 17, 2002) (estimating CLEC residential access lines); McCarren/Garzillo/Anglin Decl. ¶ 25, CC Docket No. 02-7 (FCC filed Jan. 17, 2002) (providing total residential access lines). In Maine, CLECs served approximately 0.55 percent of the residential market at the time of Verizon's application. See Torre Decl. Attach. 1, Table 1, CC Docket No. 02-61 (FCC filed Mar. 21, 2002) (estimating CLEC residential access lines); ARMIS, Form 43-08, Table III: Access Lines in Service by Customer, cols. dc, dd, de, dg & dh, row 300 (2001) (providing total Verizon residential access lines). In Nevada Bell's serving area, CLECs serve approximately

commercial alternative” to Nevada Bell in Nevada. Id. And, because its end users are served over UNE-P – which the Commission has held qualifies as “a competing provider’s ‘own telephone exchange service facilities,’” Michigan Order ¶ 94 – \*\*\* service, when considered in conjunction with the CLECs that provide facilities-based service to business customers, satisfies Track A

Second, several Nevada CLECs provide resold service to residential customers in Nevada Bell’s serving area. See J.G. Smith Aff. ¶ 13 & Attach. D. Most of these resold residential lines are provided by “pure” resellers – i.e., carriers that do not also offer facilities-based service – and, before the PUCN, a few parties contended that such carriers do not “count” for purposes of Track A. Notwithstanding the state of the record before the PUCN, however, it is now clear that a portion of the resold residential lines in Nevada Bell’s serving area are provided by a carrier that does provide facilities-based service to business customers: \*\*\* See id. Attach. D. \*\*\* accordingly satisfies Track A under clear Commission precedent. See Kansas/Oklahoma Order ¶ 43 n.101; see also Second Louisiana Order ¶ 48.<sup>4</sup>

Even were that not the case, Nevada Bell would still be entitled to rely on the numerous pure resellers serving residential subscribers in its serving area. For one thing, the statute itself plainly permits that result. By its terms, Track A contemplates reliance on a group of carriers – i.e., “competing providers” – that, when viewed collectively, provide “telephone exchange service” to both “residential and business subscribers” predominantly over their own facilities

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0.56 percent of the residential market on a wireline basis. See J.G. Smith Aff. ¶¶ 12-13 (estimating CLEC residential access lines); id. n.13 (providing total residential access lines).

<sup>4</sup> \*\*\* white pages listings appear to confirm that it provides service to residential customers. See J.G. Smith Aff. Attach. D at 1; see also Qwest Nine-State Order ¶ 32 & nn.76, 79 (relying on white pages listings to demonstrate competitive service to residential subscribers).

“in combination with . . . resale.” 47 U.S.C. § 271(c)(1)(A). That statutory language says nothing at all about pure resellers, much less does it expressly exclude them. Moreover, as noted immediately above, the Commission has already recognized that resold service to residential subscribers can satisfy Track A, provided that it is offered by a carrier that also provides facilities-based service to business customers. If the Commission were to conclude that resold service to residential subscribers does not satisfy Track A when it is offered by a pure reseller, it would in effect condition section 271 entry on the identity of the carrier providing service to residential customers. Congress surely did not intend such an absurd result.

Indeed, a decision to preclude reliance on the resold residential lines in Nevada Bell’s serving area would condition compliance with Track A not only on the identity of the specific carriers that have chosen to serve the residential market, but also on the business choices of CLECs. Nevada Bell provisions and charges for resold service in the exact same manner, regardless of whether the carrier in question is a pure reseller or is also a facilities-based carrier. The existence of approximately 1,300 resold residential lines in Nevada Bell’s serving area makes clear that Nevada Bell’s provisioning processes and rates allow CLECs a meaningful opportunity to compete in the residential market. The only reason, then, that some facilities-based carriers do not provide resold residential service is that they have elected not to. It is impossible to imagine that Congress intended to hold section 271 relief hostage to the business plans of the very carriers with which Nevada Bell seeks to compete in the interLATA market.

Third, and apart from the wireline competitive offerings described above, broadband PCS provider Cricket, which launched service in the Nevada Bell serving area in October 2001, qualifies as a “competing provider of telephone exchange service” to residential subscribers in Nevada Bell’s serving area. See J.G. Smith Aff. ¶¶ 14-21. The Commission has recognized that



a broadband PCS provider qualifies as a Track A carrier, provided its services are “being used to replace wireline service.” Second Louisiana Order ¶ 31; see also id. ¶¶ 26-30 (explaining that broadband PCS satisfies the statutory definition of “telephone exchange service”). To satisfy that standard, the Commission has suggested that applicants provide “studies, or other objective analyses, identifying customers that have replaced their wireline service with broadband PCS service, or would be willing to consider doing so based on price comparisons.” Id. ¶ 31.

Here, a study provided by the broadband PCS supplier itself makes clear that Cricket is being used as a landline replacement. See J.G. Smith Aff. ¶ 18. Specifically, an independent study reported by Cricket’s parent, Leap Wireless International, polled approximately 4,000 Cricket customers across all of its markets and found that, on average, more than one in four do not have a traditional landline phone at home. See id. Assuming that Cricket has achieved the 6-percent penetration rate in Nevada that it claims to achieve in new markets within a year of entry, Nevada Bell accordingly estimates that more than 2,000 customers in Nevada Bell’s serving area are using Cricket as a replacement for residential landline service. See id. ¶ 20 & n.31.

“This evidence is bolstered by Cricket’s own marketing of its service “to induce [landline] replacement,” which the Commission has said would be “relevant” to a Bell company’s Track A showing. Second Louisiana Order ¶ 31. Cricket trumpets its service as “a landline replacement with. . . freedom of mobility,” and it pledges to “fulfill the promise of the [1996 Act] by increasing its competitive position relative to traditional landline service.” See J.G. Smith Aff. ¶ 15 (*internal quotation marks omitted*). Indeed, Leap has told Congress that Cricket is “more of a landline replacement than a classic mobile phone company,” and it has represented to this Commission that it has “created competition” with incumbent LECs and “is committed to